



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| | | | | |
|---|-------------|----------------------|-----------------------------|------------------|
| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 09/976,540 | 10/12/2001 | Genady Grabarnik | YOR920010746US1 | 1483 |
| 7590 Ryan, Mason & Lewis, LLP 90 Forest Avenue Locust Valley, NY 11560 | | | | |
| | | | EXAMINER | |
| | | | MACILWINEN, JOHN MOORE JAIN | |
| | | ART UNIT | | PAPER NUMBER |
| | | 2142 | | |
| | | MAIL DATE | | DELIVERY MODE |
| | | 09/29/2008 | | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

| | |
|--------------------------------------|---|
| Application No. 09/976,540 | Applicant(s) GRABARNIK ET AL. |
| Examiner John M. MacLwinen | Art Unit 2142 |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Andrew Caldwell/
Supervisory Patent Examiner, Art Unit 2142

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that Cookmeyer does not teach "off-line" operation in the manner claimed by Applicant. To support this argument, Applicant argues that when Cookmeyer refers to "off-line" it is "used only in the context of 'expert analysis' and not in the context of a combined automatic data analysis and rule management methodology.

In Applicant's specification, Applicant provides guidance for interpreting the use of the term "off-line" on pg. 3, lines 4-7, stating:

"It is to be understood that the term 'off-line' is meant to refer to the fact that these tools are preferably employed in non-real time situations, i.e., performing visualizing, analyzing, and constructing tasks in accordance with historical or previously obtained and stored event data".

Applicant thus defines "off-line" as referring to "non-real time".

When Cookmeyer discusses "off-line", contrary to Applicant's arguments, Cookmeyer utilizes the same meaning as Applicant. In Cookmeyer, col. 5, lines 40-45, for example, Cookmeyer states:

"As described in detail hereinafter, the expert system performs the diagnostic assessment in accordance with an expert analysis algorithm; either as an "on the fly" diagnostic routine on performance data delivered in real time, or in an off-line manner on captured performance data files".

Thus, as the above quotation from Cookmeyer shows, Cookmeyer teaches both on-line, or "real time" analysis, as well as "off-line" analysis performed on "captured performance data". This is completely analogous with the description of "off-line" provided by Applicant in their specification, which was shown above.

Applicant's arguments that the use of "off-line" in Cookmeyer does not satisfy the claim language are thus not persuasive.

Applicant's continue by arguing that "any rules that Cookmeyer refers to are defined at run time (i.e., online) rather than at design time (i.e., offline)". However, Applicant does not provide support for this interpretation of Cookmeyer, and thus Applicant's arguments continue to be unpersuasive.

Applicant next argues that "there are no steps/operations disclosed in Cookmeyer for offline rule construction . . . and the offline discovery of at least a portion of the one or more patterns in the past event data". Applicant's arguments amount to a mere assertion of patentability and are not persuasive. Furthermore, with regards to said "past event data", Applicant's arguments are also unpersuasive for the reasons discussed above where Cookmeyer's use of the term "off-line" was detailed.

Applicant next provides their own hypothetical operation/usage scenario of Cookmeyer's disclosure without any supporting citations from Cookmeyer. Applicant's argument is not persuasive.

Applicant concludes by addressing the Ma reference, arguing that Ma does not teach "offline". Applicant's arguments are not persuasive as said feature is taught by Cookmeyer, as is discussed above.